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11 Attorney for Defendant ETSY, INC.

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14
15 AS YOU SOW, a 501(c)(3) non-profit
corporation,

16 Plaintiff,

17
18 v.

19 ETSY, INC. and DOES 1-20, inclusive,

20 Defendants.
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Case No.:

**DEFENDANT ETSY, INC.'S NOTICE OF
REMOVAL**

From the Superior Court of the State of
California, County of Alameda, Case No.
24CV078868

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Etsy, Inc. (“Etsy”) hereby removes the above-captioned action from the Superior Court of the State of California, Alameda County, to the United States District Court for the Northern District of California. Removal is based on the grounds of diversity jurisdiction under 28 U.S.C. § 1332. In support of this Notice of Removal, and in accordance with 28 U.S.C. § 1446, Etsy states as follows:

PROCEDURAL BACKGROUND

1. Plaintiff As You Sow sued Etsy in the Superior Court of California, County of Alameda on June 7, 2024, captioned *As You Sow v. Etsy, Inc.*, Case Number 24CV078868 (“State Court Action”).

2. The Complaint stated three causes of action under California Health & Safety Code, § 25249.6 (“Proposition 65”), California Code Regulations, §§ 25602 and 25603, and California Business & Professional Code, § 17200 et seq.

3. Etsy has timely filed this Notice of Removal within thirty days after receipt of the Complaint in the State Court Action. *See* 28 U.S.C. § 1446(b)(3).

4. Under 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served on Etsy, as well as the electronic docket sheet and all items filed on the State Court Action docket that Etsy was able to access after receiving service of the Complaint, are attached as **Exhibit 1**.

VENUE

5. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and 1446(a), Etsy files this Notice of Removal in the United States District Court for the Northern District of California, which is the federal district court embracing the state court where Plaintiff has brought the State Court Action – in Alameda County, California. Venue is proper in this district pursuant to 28 U.S.C. § 84(a).

NOTICE

6. In accordance with 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Etsy will file a Notice of Removal with the Clerk of the Superior Court of the State of California, County of Alameda, and will attach a copy of this Notice of Removal (and all exhibits) thereto. A copy of the Notice of Removal (without exhibits) is attached as **Exhibit 2**.

B Amount in Controversy Exceeds \$75,000.00

14. While Plaintiff does not plead a specific amount of damages, it is apparent that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

15. Since Plaintiff “prepared a complaint that does not assert the amount in controversy,” Etsy “can establish the amount in controversy by an unchallenged, plausible assertion of the amount in controversy in its notice of removal.” *Ibarra v. Manheim Inv, Inc.* 775 F.3d 1193, 1197-98 (9th Cir. 2015); *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87-89 (2014).

16. Here, Plaintiff’s Complaint alleges, among other requests for relief, civil penalties pursuant to Health and Safety Code § 25249.7(b) for each alleged violation. That statute provides for civil penalties of up to “two thousand five hundred dollars (\$2,500) per day for each violation” in addition to “any other penalty” allowable under the law. *See* Cal. Health & Safety Code § 25249.7. Plaintiff’s Complaint alleges that the relevant products have been offered for sale on Etsy’s platform since “beginning at least in 2020 and are continuing to present...” Complaint ¶ 62. Plaintiff has identified 9 allegedly violative products in the Complaint. Complaint, ¶ 66. While Etsy disputes both liability and damages, an assessment of \$2,500 per day in civil penalties for each alleged product would result in an amount in excess of \$75,000.00.¹

MISCELLANEOUS

17. This action has not been previously removed to federal court.

18. By filing this notice of removal, Etsy does not waive any defenses, either procedural or substantive, that may be available. Among other things, Etsy does not waive and expressly reserves its right to compel arbitration of this action pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, its Terms of Use, and any other applicable law or agreement.

19. No statement or omission in this notice is an admission of any allegations of or damages sought in the Complaint, and for clarity, Etsy denies all of the allegations and claims in the Complaint and will present its arguments and defenses at the appropriate time.

¹ Etsy disputes any wrongdoing in this matter, but Etsy takes Plaintiff’s allegations as true for the purposes of this Notice of Removal.

CONCLUSION

Etsy therefore requests, under 28 U.S.C. §§ 1332, 1441, and 1446, that the State Court Action be removed to the United States District Court for the Northern District of California, and that the Court assume jurisdiction over this action and enter such orders necessary to accomplish the requested removal.

Respectfully submitted,

McGUIREWOODS LLP

By: /s/ Nicholas J. Hoffman
Samuel L. Tarry, Jr.
Nicholas J. Hoffman
Attorneys for Defendant ETSY, INC.

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Wells Fargo Center, South Tower, 355 S. Grand Avenue, Suite 4200, Los Angeles, California 90071-3103. On July 11, 2024, I caused the service of the foregoing document described as **NOTICE OF REMOVAL**, addressed as follows:

Rachel S. Doughty
Jennifer Rae Lovko
GREENFIRE LAW, PC
2748 Adeline Street, Suite A
Berkeley, CA 94703
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Attorneys for Plaintiff,
AS YOU SOW

- ☒ **BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices.
- ☒ **(BY ELECTRONIC TRANSMISSION):** I caused such document to be served electronically to the person’s electronic service address by transmitting a PDF format copy of such document(s) to each person at the e-mail addresses set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 11, 2024, at Los Angeles, California.

/s/ Miguelina Mendez
Miguelina Mendez